

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MARSHALL RICHMOND,

Plaintiff,

v.

RICHARD IVES, et al.,

Defendants.

Case No. 3:17-cv-00103-YY

OPINION AND ORDER

MOSMAN, J.,

On October 17, 2018, Magistrate Judge Youlee Yim You issued her Findings and Recommendation (F&R) [61], recommending that I GRANT Defendants' Motion to Dismiss [55] without prejudice and with leave to amend. Defendants objected to the F&R, arguing that leave to amend was inappropriate because no amendment could correct the defects in the Complaint. Plaintiff did not respond to the Motion to Dismiss or Defendants' Objections to the F&R [63].

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or

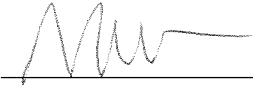
recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

CONCLUSION

I have reviewed those portions of the F&R to which Defendant objected. Upon review, I agree with Judge You's recommendation. I ADOPT the F&R [61] except that I do not adopt Judge You's finding that Plaintiff's failure to respond to the Motion to Dismiss was a concession. Because Judge You's recommendation is supported by other findings, Defendants' Motion to Dismiss [55] is GRANTED. Plaintiff's Complaint [1] is DISMISSED, with leave to amend. Plaintiff may file an amended complaint within 60 days of this Order.

IT IS SO ORDERED.

DATED this 4th day of January, 2019.



MICHAEL W. MOSMAN
Chief United States District Judge